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**Request for City Council Committee Action
From the City Attorney's Office**

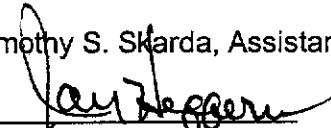
Date: July 21, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Kevin Buford v. City of Minneapolis, U. S. District Court file no. 00-1868 MJD/JGL;
Kevin Buford v. City of Minneapolis, U. S. District Court file no. 03-1153 MJD/JSM;
Kevin Buford v. City of Minneapolis, U. S. Bankruptcy Court file no. 02-83907; and
Steven Tatro v. City of Minneapolis, Minnesota Court of Appeals file no. A03-733.

Recommendation: That the City Council approve settlement of the lawsuit filed by Kevin Buford, United States District Court file no. 00-1868, in the amount of \$187,500.00, payable \$125,000.00 to Kevin L. Buford and \$62,500.00 payable to Albert T Goins, Sr. and Kathryn R. Burke, his attorneys, and to authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

This incident arose on May 13, 1999, when former Minneapolis police officer Steven Tatro was working off duty in uniform at the Dayton Radisson parking ramp. Mr. Tatro arrested and used force on the Plaintiff, Kevin Buford, striking him on the head and face with his handcuffs. Mr. Buford suffered cuts to his face and head, as

well as, several broken teeth that were later removed. He has also alleged a variety of psychological problems arising from the incident or exacerbated by the incident. The City determined that Mr. Tatro's use of force was excessive and that he violated departmental rules and regulations. Mr. Tatro was terminated from employment.

The Plaintiff filed a lawsuit naming Tatro and the City of Minneapolis as Defendants. The Plaintiff alleged numerous causes of action against Tatro and the City of Minneapolis. The lawsuit included allegations of federal civil rights violations and state tort violations. The court permitted Mr. Buford to assert punitive damages against Mr. Tatro.

The City and Mr. Buford brought cross motions for summary judgment on file no. 00-1868. Mr. Buford also sought summary judgment against Mr. Tatro on excessive force, assault, battery and intentional infliction of emotional distress counts. Mr. Tatro did not oppose the motion, admitting that he had violated Mr. Buford's constitutional rights and committed the tort violations. Mr. Buford asserted that the City of Minneapolis was vicariously liable for the torts admitted by Mr. Tatro. The City sought summary judgment seeking dismissal of all claims. A hearing on the motions was held on July 11, 2003, before the Hon. Michael J. Davis in United States District Court. From the nature of the questioning and statements from the court, it became apparent that the City was unlikely to prevail on its motion and that summary judgment would be granted against the City on the vicarious liability issue. The court ordered an immediate settlement conference for the afternoon of July 11, 2003. A closed meeting of the City Council was held to discuss the litigation prior to the settlement conference.

At the settlement conference before Magistrate Judge Jonathan Lebedoff, a proposed settlement was reached in the amount of \$187,500.00. The proposed settlement would resolve all pending litigation by Mr. Buford and Mr. Tatro. I believe that the proposed settlement is in the best interests of the City of Minneapolis and recommend that it be approved by this Committee and the City Council. It appears that the City would be found liable for the torts committed by Mr. Tatro under a theory of vicarious liability. Vicarious liability holds the employer responsible for the foreseeable actions of an employee. While Mr. Tatro was working at an off duty job, the job was approved by the City, he was in uniform and left the premises of the off duty employer to effectuate the arrest. The use of force by a police officer would most likely be considered foreseeable by the court. However, the defense and indemnification decision by the City has limited liability by preventing claims for constitutional violations, punitive damages or attorney's fees. Vicarious liability has been applied to other public employers for the foreseeable conduct of employees. Legal research and the questions from the court during the summary judgment hearing indicate the very strong likelihood that summary judgment would be granted against the City on the issue of vicarious liability. The City could be responsible for damages proved by Mr. Buford limited by the liability cap of \$300,000.00 provided by Minn. Stat. § 466.04.

Three related litigation matters would also be resolved by this proposed settlement. The City determined that Mr. Tatro would not be defended or indemnified pursuant to Minn. Stat. § 466.07. The issue of defense and indemnification is currently before the Minnesota Court of Appeals, Steven Tatro v. City of Minneapolis, file no. A03-733. Mr. Tatro appealed the decision by the City adopting an administrative law judge finding that the City need not defend or indemnify him. The appeal would be dismissed after the release by Mr. Buford of all claims against Mr. Tatro. Secondly, Mr. Tatro declared bankruptcy. Mr. Buford has challenged the action by the City denying defense and indemnification as a violation of the bankruptcy stay ordered by the bankruptcy court in file no. 02-83907. The bankruptcy court action seeks to have the defense and indemnification decision set aside. Finally, the independent suit of Kevin Buford v. City of Minneapolis, U. S. District Court file no. 03-1153 MJD/JSM, in which Mr. Buford alleges a variety of constitutional violations, including discrimination, and torts against the City arising from the handling of the defense and indemnification of Mr. Tatro and the arrest and prosecution of Mr. Buford for unrelated criminal offenses would be dismissed.